

DATE OF DETERMINATION	Friday, 10 July 2020
PANEL MEMBERS	Renata Brooks (Acting Chair), Tim Fletcher and Angus Gordon
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically between 30 June 2020 and 7 July 2020.

MATTER DETERMINED

PPSSTH-2 – Bega Valley Shire Council – DA2019.208 at Cattle Bay Road, Eden – Cattle Bar Marina (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

The panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

Development application

The panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

- The development is permissible with consent and is reflective of the objectives of the SP3 Tourist and E2 Environmental Conservation zoned land and will provide economic benefits to the community.
- The development is generally consistent with the applicable provisions of the relevant planning instruments and the *Coastal Management Act 2016*
- Conditions have been prepared to ensure the construction and operation of the development minimise impacts on the aquatic and terrestrial environment and protect associated coastal infrastructure, public amenity and aboriginal heritage
- The development has met the requirements for issue of a permit under the *Fisheries Management Act 1994* and a licence under the *Protection of the Environment Operations Act 1979*

CONDITIONS

The development application was approved subject to the conditions in the supplementary council assessment report dated 25 June 2020 with the following amendments.

- Amend condition 1 to reference the drawings and additional information included in Appendix 1 of the supplementary Council assessment report dated 25 June 2020
- Amend conditions 7 & 8 as follows:
 7. Structural and layout details of Maritime structures – Prior to the commencement of works, the Proponent shall submit to the satisfaction of the Certifying Authority, detailed and dimensioned structural and layout drawings and specifications prepared and signed by a suitably qualified practicing coastal/maritime Engineer experienced in the design of similar maritime structures. The structures and marina layout are to demonstrate compliance with;
 - a) Australia Standard AS 3962-2020 ‘Guidelines for Design of Marinas’, including the achievement of the required wave climate within the marina as a result of the combined effects of the wave attenuator and the integrated design of the pontoons.

Australian Standard AS4997 – 2005 ‘Guidelines for the Design of Maritime Structures’ and NSW Maritime Authority Guidance Note 8.3.02.

- b) Relevant clauses of the BCA; and
- c) The development consent

The drawings must also identify all new works below the Mean High Water Mark and all their components and interconnections

8. Prior to the issue of a final occupation certificate, the proponent shall engage and be provided with a report from an independent suitably qualified coastal/maritime Engineer with demonstrated experience in the design of similar maritime structures, detailing that all maritime structures have been completed in accordance with the approved structural plans and are in accordance with:

- a) Australia Standard AS 3962-2020 ‘Guidelines for Design of Marinas’, Australian Standard including that the combined effect of the wave attenuator and pontoon design will achieve a wave climate for all berths that complies with AS 3962-2020 AS4997 – 2005 ‘Guidelines for the Design of Maritime Structures’ and NSW Maritime Authority Guidance Note 8.3.02.
- b) Relevant clauses of the BCA; and
- c) The development consent

A copy of the report shall be provided to the Certifying Authority and Council prior to the release of any Occupation Certificate.

Reason: These conditions are considered warranted to ensure that the marina and wave attenuator has been suitably designed and constructed. Further, given that the information supplied by the applicant indicated that the attenuator alone would not achieve the wave climate specified in AS 3962:2020 at all berths however the requirements could be satisfied by the integration of the wave attenuator with appropriately designed , and constructed pontoons, it is considered critical that this matter be appropriately addressed.

- Add a condition after Condition 9
“Prior to the commencement of works, the proponent shall submit to the satisfaction of the Certifying Authority detailed structural drawings and specifications which demonstrate that the temporary buildings have been designed to accommodate any wave impact from an overtopping wave surge”

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during public exhibition and heard from all those wishing to address the panel. The panel notes that issues of concern included:

- The level of economic impact of the development
- Impact on the aquatic environment and nearby aquaculture activities
- Visual and noise impacts
- Integration with surrounding pedestrian and road networks
- Relocation of existing swing moorings
- Construction and operational impacts
- Effect of the wave attenuator on coastal landforms and infrastructure and vulnerability of the development to storm impacts

The panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting. The panel sought additional information in relation to design of the proposed attenuator and notes that additional and amended conditions will address design quality, construction and operational impacts.

PANEL MEMBERS

A stylized, cursive handwritten signature in black ink, featuring large loops and a long horizontal stroke.

Renata Brooks (Acting Chair)

A cursive handwritten signature in black ink, with a prominent 'F' and a long, sweeping tail.

Tim Fletcher

A cursive handwritten signature in black ink, with a clear 'A' and 'G'.

Angus Gordon

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSTH-2 – Bega Valley – DA2019.208
2	PROPOSED DEVELOPMENT	Construction of a 154 berth marina comprising three floating pontoon arms restrained by piles, a fixed wave attenuator, minor refurbishment of the existing wharf, landside car park comprising 97 spaces plus 3 loading/unloading spaces, temporary building to house administration and toilets and relocation of 24 swing moorings
3	STREET ADDRESS	Cattle Bay Road, Eden
4	APPLICANT/OWNER	Eden Cattle Bay Marina Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Designated development - marina or other related land and water shoreline facilities
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ Environment Protection and Biodiversity Conservation Act 1999 ○ Protection of the Environment Operations Act 1997 ○ Fisheries Management Act 1994 ○ Biodiversity Conservation Act 2016 ○ National Parks and Wildlife Act 1974 ○ State Environmental Planning Policy (Coastal Management) 2018 ○ State Environmental Planning Policy (State and Regional Development) 2011 ○ State Environmental Planning Policy (Infrastructure) 2007 ○ State Environmental Planning Policy (Primary Production and Rural Development) 2019 ○ State Environmental Planning Policy No 33 – Hazardous and Offensive Development ○ State Environmental Planning Policy No 44 – Koala Habitat Protection ○ State Environmental Planning Policy No 55 – Remediation of Land ○ State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 ○ Bega Valley Local Environmental Plan 2013 • Draft environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy No 44 – Koala Habitat Protection • Development control plans: <ul style="list-style-type: none"> ○ Bega Valley Section 94 and 94A Contribution Plan 2014 ○ Bega Valley Development Control Plan 2013 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil • Coastal zone management plan: Nil • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council supplementary report: 25 June 2020 • Council assessment report: 4 December 2019

		<ul style="list-style-type: none"> • Addendum Council assessment report: 11 March 2020 • Written submissions during public exhibition: six (6) • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Council assessment officer – Mark Fowler ○ On behalf of the applicant – Michael Jarvin
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Final briefing to discuss council's recommendation, 1 April 2020, 12:00 pm. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Renata Brooks (Acting Chair), Tim Fletcher and Angus Gordon ○ <u>Council assessment staff</u>: Mark Fowler, Keith Tull, Derek Van Bracht and Will Nichols
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report as amended by the addendum Council assessment report and the supplementary Council assessment report dated 25 June 2020.